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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,551	06/28/2002	Satoshi Mekata	AKY-0002	3224
23353	7590	04/19/2005	EXAMINER	
RADER FISHMAN & GRAUER PLLC LION BUILDING 1233 20TH STREET N.W., SUITE 501 WASHINGTON, DC 20036			LEVY, NEIL S	
			ART UNIT	PAPER NUMBER
			1615	

DATE MAILED: 04/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/089,551	MEKATA ET AL.	
<b>Examiner</b>	<b>Art Unit</b>		
NEIL LEVY	1615		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 03 February 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 4-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 4-18 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 4-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson WO 96-22686 in view of Burke 5620678, Hibbard 280358, Dohara et al 5055299.

Applicant's claim is to a single phase, but this is only in the preamble, and not given patentable weight. The single phase is seen to be claimed as (a) concentrate, separate from (b) propellant. The references provide the instant ingredients and concentrations thereof, and also provide for the instant claimed separation of hydrophilic and Oleophilic phases. Emulsions constitute a single phase; separation then occurs (p.3, top of Nelson). At Nelson, (p.6 top) Hydrocarbon oil component is 0.5-40% of total, cosolvents, 1-5%, may be added (last paragraph, p.6) actives (p.7, top) are 0.2-2% water in 30% of total (p.7, 2<sup>nd</sup> paragraph) propellant is dimethyl ether; 8-50% (p.7, lines 28-p, 8, top) specific examples with polyols are not seen.

Burke utilizes Dimethyl ether permitting single phase propellant-concentrate aerosols which provide separable hydrophilic and oleophilic combinations (col.2, lines 50-65) resulting in increased efficacy of insecticide application. Here, isopropanol is solvent.

Hibbard shows there is a concern with a number of aspects of aerosol composition, including fire and explosion hazard (col.1, lines 15-18) utilizing volatile organisms. Hibbard also shows testing to determine flash points (col.2, bottom).

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Dohara, as indicated in prior actions, provides alternative cosolvents, polyols included, for isopropyl alcohol, with DME (col.1, line 67-col.2, line 6).

The primary reference provides the basic, general, essence of the instant invention as claimed, but does not specify, identify each and every element of the instantly claimed methods and compositions. However, the secondary references directed at the similar same methods and compositions to solve the same problem of the primary reference do provide these additional elements.

All the critical elements of the instant invention are disclosed.

The selection of each ingredient is a result effective parameter chosen to obtain the desired effects. It would be obvious to vary the nature of each ingredient to optimize the effects desired such as desired number of applications, length of time for desired protection, ease of handling, safety, environmental dispersal, contamination, and residual effects, fire and explosion hazard-carriers, cosolvents, solvents, adjuvants, and exact ratios and amounts thereof are within the purview of one in the art to attain, in order to optimize desired effects, such as control of specific insects, composition compatibility, stability, and reduction of explosion and fire hazard.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize an aerosol insecticide control means, to use any of art recognized means, as of Nelson or Dohara, with propellants as safe from fire hazard as taught by Hibbing but with added import of ozone depletion, now recognized, as taught by Burke to be satisfied by utilizing DME as the propellant. All reference apply agents to control insects, in aerosol form. Use of cosolvents and amount of

solvent is taught in all references to be dependent on the active agent particularly desired. Optimization of fire/explosion hazard would readily be accomplished by replacement of the more volatile alcohols of Burke and Nelson with the polyols of Dohara, particular % as claimed are met/as only concentrates are instantly claimed; the other components and propellants, as of Nelson and Burke are not excluded.

Applicant's arguments with respect to claims 4-18 have been considered but are moot in view of the new ground(s) of rejection.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Levy/tgd

April 19, 2005

  
NEIL S. LEVY  
PRIMARY EXAMINER